TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1900.

No. 225.

THE AMERICAN SUGAR REFINING COMPANY, PETITIONER,

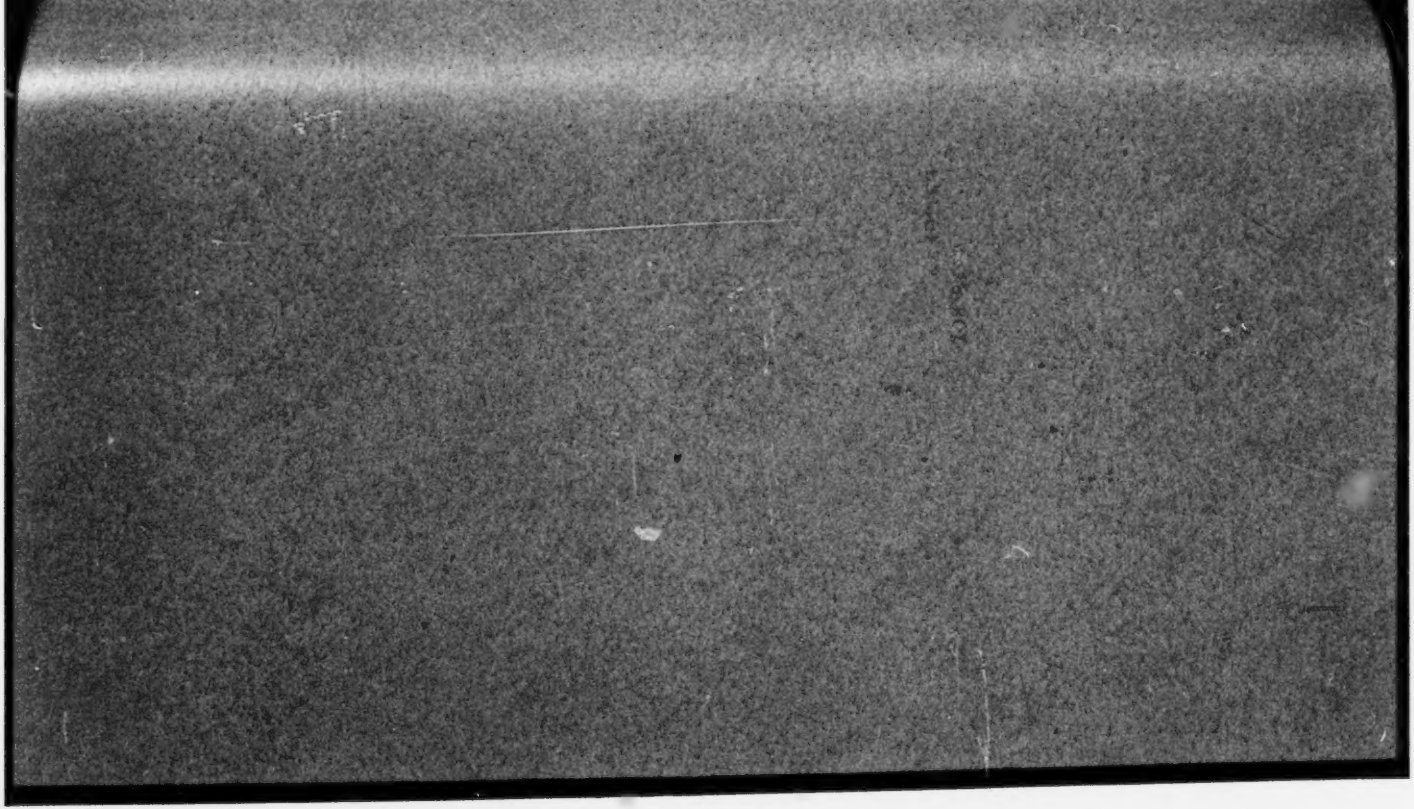
vs.

THE UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR CERTIORARI FILED MARCH 17, 1900.
CERTIORARI AND RETURN FILED AUGUST 6, 1900.

(17,678.)



(17,673.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1900.

No. 225.

THE AMERICAN SUGAR REFINING COMPANY, PETITIONER,

vs.

THE UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

INDEX.

	Original.	Print.
Caption	*a*	1
Transcript from the circuit court of the United States for the southern district of New York	*a*	1
Petition of importers	1	1
Bond for damages and costs	7	4
Order upon the board of United States general appraisers	9	5
Return of the board of United States general appraisers	10	6
Exhibit A—Letter, deputy collector to board of United States general appraisers submitting protest	11	6
C—Protest	12	7
B—Letter, deputy collector to board of United States general appraisers submitting protest	14	8
D—Protest	15	8
E—Protest	16	9
F—Decision of board of United States general appraisers.	18	10
G—Decision of board of United States general appraisers.	19	10

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 11, 1900.

	Original.	Print
Supplemental return	21	11
Stipulation and order to correct petition	23	12
Application for reference	25	13
Order of reference to George H. Sharpe	26	13
Order extending time to take testimony	27	14
Testimony taken before George H. Sharpe, referee	29	15
Testimony of William C. Jacobs	31	16
Opinion, Townsend, J	37	20
Judgment of affirmance	40	22
Assignment of errors	41	23
Joinder in error	44	24
Bond	45	24
Notice of appeal	48	26
Petition of appeal	49	27
Citation	50	27
Clerk's certificate	51	28
Opinion, Shipman, J	52	28
Judgment	57	31
Clerk's certificate	59	32
Writ of certiorari	60	32
Stipulation as to return to writ of certiorari	63	33
Return to writ of certiorari	65	33

a United States Circuit Court of Appeals for the Second Circuit.

THE AMERICAN SUGAR REFINING COMPANY, Appellant,
vs.
THE UNITED STATES, Appellee. } (2676.)

Transcript of Record.

Appeal from circuit court of the United States for the southern district of New York.

1 United States Circuit Court for the Southern District of New York.

In the Matter of the Application of THE AMERICAN SUGAR REFINING COMPANY for a Review of the Decision of the Board of General Appraisers as to the Rate and Amount of Duty on Certain Merchandise Imported by the American Sugar Refining Company, a Corporation, Incorporated under the Laws of the State of New Jersey, per Jno. Swan, March 15, 1897; per Richmond, March 11, 1897; per Bellauri, March 30, 1897. Protest Nos. 23975 F—6504; 24041 F—7211; 24042 F—7212.

To the honorable the circuit court of the United States for the southern district of New York:

Your petitioner is a corporation duly organized and existing under the laws of the State of New Jersey, and engaged in business as such corporation at the port of New York. Your petitioner is dissatisfied with the decision made on the 18th day of November, 1897, by the board of general appraisers designated by the
2 Secretary of the Treasury for and on duty at said port, pursuant to the act of Congress approved June 10, 1890, entitled "An act to simplify the laws in relation to the collection of the revenues," as to the construction of the law and of the facts respecting the classification of certain merchandise, to wit, on certain sugar, per entries numbered 41123, 39405 and 51209, imported per John Swan, March 15, 1897; per Richmond, March 11, 1897; per Bellauri, March 30, 1897, and as to the rate of duty imposed thereon under such classification, such merchandise having been entered for consumption by your petitioner, respectively makes application to this court for a review of the questions of law and fact involved in such decision, and hereby makes the following concise statement of the errors of law and fact complained of, to wit:

The said merchandise was classified and assessed for duty at 40 per cent. ad valorem under Schedule E of the tariff act of August 28, 1894, and upon the value thereof, and reported to the collector as the value of said sugar in condition as landed in the United States, and not upon the value thereof in the principal markets of the country whence the same was imported at the time of shipment and in condition as shipped, which is the dutiable value thereof as

prescribed by law, although such dutiable value was reported by the appraiser as part of his return of appraisement, and the entries thereof were liquidated accordingly.

The said owner and importer being dissatisfied with the decision assessing duty as aforesaid, gave notice within ten days after said liquidation and ascertainment of duty, setting forth the reasons of its objection thereto, claiming the said merchandise to be dutiable at forty per cent. ad valorem upon the actual market value and wholesale price thereof in the principal markets of the country whence the same was imported, at the time of shipment and in condition as shipped. Whereupon the invoices and all papers
3 and exhibits connected therewith were duly transmitted to the said board of general appraisers, which board proceeding to hear and determine the questions of law and fact involved, reversed the collector's said decision in the premises. The record of their decision to this effect appears in communications addressed to the collector of the port under date of the 18th of November, 1897, copies of which are hereto attached and made part hereof.

And for the errors of law and fact in the decision of said board in this regard herein complained of your petitioner states:

1. That the said board were in error in holding—

I. That duty on said importation was assessed upon the appraised value thereof.

2. In not holding that duty should have been assessed upon the actual market value and wholesale price of the merchandise in the principal markets of the country whence the same was shipped at the time of shipment, and in condition as shipped, as reported by the appraiser, and that such value so reported is the lawful and actual appraised and dutiable value of such merchandise.

3. In not holding that the action of the collector in assessing duty upon the increased value of said sugar reported by the appraiser as due to drainage on the voyage of importation, the same being the value thereof at the time of landing and in the condition thereof as landed, was illegal and not the dutiable value of such merchandise.

4. In not holding that any advance in the value of said sugar occurring subsequent to the date of the shipment thereof from the place whence imported, did not constitute an element of dutiable value.

4 Accordingly your petitioner respectfully prays this court to order the said board of general appraisers to return to the court the record and evidence taken by the said board, together with a certified statement of the facts involved in the case, and of their decision thereon, and thereupon to proceed to review said decision, and to determine the questions of law and fact involved in the same.

THE AMERICAN SUGAR REFINING CO., *Petitioner.*

JOHN E. PARSONS,
Attorney for Petitioner, 111 *Broadway, New York City.*

General appraiser.
Dictated.

Typewritten H.
Compared R.

Value of sugar.
Not for publication.

In the Matter of the Protests 23975 F/6504 of THE AMERICAN SUGAR REFINING CO. against the Decision of the Collector of Customs at New York as to the Rate and Amount of Duties Chargeable on Certain Merchandise Imported per Jno. Swan. Entered March 15, 1897.

Before the U. S. general appraisers at New York, Nov. 18, 1897.

Opinion by Wilkinson, G. A.

The appellants appeared and submitted the case on the record.

5 We find, upon the collector's report, that duty was assessed upon the appraised value.

The protest is overruled.

H. M. SOMERVILLE,
GEO. TICHENER,
CHARLES H. HAM,
Board of U. S. General Appraisers.

Three inclosures.

Entry and invoices returned herewith. Protests received with the collector's letter of September 7, 1897.

General appraisers.
Dictated.

Typewritten by H.
Compared by R.

Value of sugar.
Not for publication.

In the Matter of the Protests $\frac{24041}{7211}$ $\frac{24042}{7212}$ F of THE AMERICAN SUGAR REFINING COMPANY against the Decision of the Collector of Customs at New York — to the Rate and Amount of Duties Chargeable on Certain Merchandise Imported per Richmond, Entered M'ch 11, '97; per Bellaura, Entered M'ch 30, '97.

Before the U. S. general appraisers at New York, Nov. 18, '97.

Opinion by Wilkinson, G. A.

The appellants appeared and submitted the case on the record.

6 It appears that the appraisers made certain additions to market value and no application for reappraisement was made.

We find upon the report of the collector that duty was assessed

upon the value of the merchandise as returned by the U. S. appraisers.

The protest is overruled.

H. M. SOMERVILLE,
GEO. TICHENOR,
CHARLES H. HAM,
Board of U. S. General Appraisers.

Five enclosures.

Entries and invoices returned herewith. Protests received with the collector's letter of Sept. 8, '97.

(Endorsed:) U. S. circuit court, southern district of New York. In the matter of the application of the American Sugar Refining Company for a review of the decision of the board of general appraisers, &c. Petition. John E. Parsons, attorney for petitioner, 111 Broadway, New York city. U. S. circuit court. Filed Dec. 17, 1897. John A. Shields, clerk.

7 United States Circuit Court for the Southern District of New York.

In the Matter of the Application of THE AMERICAN SUGAR REFINING COMPANY for a Review of the Decision of the Board of General Appraisers as to the Rate and Amount of Duty on Certain Merchandise Imported by the American Sugar Refining Company, a corporation incorporated under the laws of the State of New Jersey, per Jno. Swan, March 15, 1897; per Richmond, March 11, 1897; per Bellauri, March 30, 1897. Protest, Nos. 23975 F—6504, 24041 F—7211, 24042 F—7212.

Know all men by these presents that I, Francis O. Matthieson, of the city of New York, am held and firmly bound unto the United States of America in the sum of one hundred dollars to be paid to the said United States of America, for the payment of which well and truly to be made I bind myself and my heirs, executors and administrators.

Sealed with my seal and dated the 16th day of December, 1897.

Whereas, the above-named American Sugar Refining Company has applied or will apply to the circuit court of the United States for the southern district of New York for a review of the ques-
8 tions of law and fact involved in the decision of the board of United States general appraisers at the port of New York, upon the entry of certain merchandise as above mentioned.

Now, therefore, the condition of this obligation is such, that if the above-named applicant shall prosecute said matter, application or proceeding to effect, and pay all damages and costs, if he shall fail to make said matter, application or proceedings good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

F. O. MATTHIESON. [SEAL.]

Sealed and delivered and taken and acknowledged before me this 16th day of December, 1897.

UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

On December 16, 1897, before me personally appeared Francis O. Matthiesen, to me known to be the individual who executed the above bond, who, being duly sworn, deposes and says: That he is a resident of the southern district of New York, and that he is worth the sum of two hundred dollars over and above all his just debts and liabilities; and duly acknowledged that he executed the same.

[SEAL.] JOHN H. HAMMOND,
Notary Public, New York County.

Approved Dec. 17, 1897.

——— ———,
U. S. Circuit Judge.

(Endorsed:) U. S. circuit court, southern district of New York. In the matter of the application of the American Sugar Refining Company for a review of the decision of the board of general appraisers, &c. Bond for damages and costs. John E. Parsons,
9 attorney for petitioner, 111 Broadway, New York city. This bond is approved as to form and amount and sufficiency of surety. Dated December —, 1897. E. Henry Lacombe, U. S. circuit judge. U. S. circuit court. Filed Dec. 14, 1897. John A. Shields, clerk.

At a stated term of the circuit court of the United States for the southern district of New York, held at the United States court-house and post-office building in the city of New York, on the 17th day of December, 1897.

Present: Hon. E. Henry Lacombe, judge.

In the Matter of the Application of THE AMERICAN SUGAR REFINING COMPANY for a Review of the Decision of the Board of General Appraisers as to the Rate and Amount of Duty on Certain Merchandise Imported by the American Sugar Refining Company, a Corporation Incorporated under the Laws of the State of New Jersey, per Jno. Swan, March 15, 1897; Richmond, March 11, 1897; Bellauri, March 30, 1897. Protest- Nos. 23975 F—6504, 24041 F—7211, 24042 F—7212.

On reading and filing the petition herein and the exhibits thereto annexed, and on motion of John E. Parsons, attorney for the petitioner, it is—
10 Ordered, that the board of United States general appraisers at the port of New York return to this court the record and evidence taken by them in each of the above matters, together with a certified statement of the facts involved in such matters and their decision thereon.

E. HENRY LACOMBE,
U. S. Circuit Judge.

(Endorsed:) U. S. circuit court, southern district of New York. In the matter of the application of the American Sugar Refining

Company for a review of the decision of the board of general appraisers, &c. Order to the board of general appraisers. John E. Parsons, attorney for petitioner, 111 Broadway, New York city. U. S. circuit court. Filed Dec. 17, 1897. John A. Shields, clerk.

In the Circuit Court of the United States for the Southern District of New York.

In the Matter of the Application of THE AMERICAN SUGAR REFINING COMPANY for a Review of the Decision of the Board of United States General Appraisers as to the Rate, &c., of Duty on Certain Sugar Imported by Them in the Vessels and on the Dates Named Herein. Suit No. 2676.

Return of the Board of United States General Appraisers to the Order of Hon. E. Henry Lacombe, Circuit Judge.

Dated New York, Jan. 21, 1898.

11 The board of United States general appraisers, sitting at New York, in response to the order of the court in the above matter, make the following return of the record and evidence taken by them in the above matter, and of the facts involved therein, as ascertained by them.

They state that letters, hereto annexed as Exhibits "A" and "B," were received from the collector of customs at New York, submitting, under the provisions of section 14 of the act of June 10, 1890, the protests marked Exhibits "C," "D," and "E," and described as follows:

Coll's No.	Board No.	Protestants.	Vessel.	Date of entry.
6504	23975 F.	American Sugar Refining Co.	Jno. Swan.	M'ch 15, '97
7211	24041 F.	"	Richmond.	M'ch 11, '97
7212	24042 F.	"	Bellaura.	M'ch 30, '97

On the 18th of November, 1897, the board rendered decisions upon said protests. Copies of the opinions are annexed as Exhibits "F" and "G."

EXHIBIT A.

OFFICE OF THE COLLECTOR OF CUSTOMS,
PORT OF NEW YORK, *September* 7, 1897.

Board of general appraisers, port of New York.

GENTLEMEN: I transmit the protest of the American Sugar Refining Co., No. 6504, against the assessment of duty as made by this office, on certain "sugar" based upon an alleged excessive valuation of the sugar.

The merchandise was imported by them in the "Jno. Swan" March 15, 1897.

I have to state that to the entered amount of the invoice the appraiser made certain additions to make market value. No
12 application for a reappraisement was made by the importers under the provisions of sec. 13 of the act of June 10, 1890, hence duty was assessed upon the value of the mdse. as returned by U. S. appraiser.

Respectfully yours, W. E. ESTERBROOK,
Deputy Collector.

(4 inclosures.)

(Endorsed:) 23975 F. Custom-house, collector's office, New York, N. Y., Sept. 7, 1897. G. R. Bidwell, collector. Subject: No. 6504. Am. Sugar Ref. Co. Received by board of U. S. general appraisers, Sep. 8, 1897.

EXHIBIT C.

N. Y., *Aug.* 11, 1897.

Hon. Geo. R. Bidwell, collector, port of New York.

SIR: The American Sugar Refining Company hereby protests against your decision as to the rate and amount of duty imposed upon certain sugars imported per Jno. Swan on the 13th day of March, 1897, entry No. 41123, because the amount of duty so imposed is excessive and illegal for reasons following, to wit:

1. That although the appraisers ascertained and reported to you the actual market value and wholesale price of said sugar in the principal markets of the country whence the same was imported at the time of importation and in condition as shipped, he also appraised and returned to you the value of said merchandise in condition as landed in the United States, making report to you as follows: "Value of sugar per unit of quantity advanced from 6/8 per cwt. 87°, the market value when shipped, to 7/9 per cwt. 87° in
13 condition landed, owing to increased value due to drainage on the voyage of importation."

2. That you exacted duty upon the increased value in condition landed, so reported to you notwithstanding the fact that the appraiser had reported to you a lower value of the sugar at the time of shipment and in condition as shipped, which action on your part was in violation of section 19 of the act aforesaid which requires that "the duty shall be assessed upon the market value of wholesale quantities, at the time of exportation to the United States, and in condition in which such merchandise is there bought and sold for exportation to the United States, or consigned to the United States for sale," and that the words "value" or "actual market value," wherever used in said act or in any law relating to the appraisement of imported merchandise, shall be construed to mean the actual market value or wholesale price as defined in said section.

Respt. yours,
THE AMERICAN SUGAR REFINING CO.,
By HENRY C. MOTT, *Attorney.*

(Endorsed:) 6504. The American Sugar Ref. Co. Jno. Swan. 23975 F. Sugar. Vessel, c. Jno. Swan. Entry, 1897, Mar. 15. Liq'ed, 1897, Aug. 7. Protested, 1897, Aug. 11. Custom-house, New York, Aug. 11, 1897. Received.

14 EXHIBIT B.

UNITED STATES CUSTOMS SERVICE, PORT OF NEW YORK,
COLLECTOR'S OFFICE, *Sept.* 8, 1897.

Board of U. S. gen'l appraisers at the port of New York.

GENTLEMEN: I submit the protests of the "American Sugar Ref. Co." $\frac{24041\ F\ \ 24042\ F}{Nos.\ 7211-7212}$ against the assessment of duty as made by this office, on certain "sugar" based on an alleged excessive valuation of the same—

The mdse. was imported by them in the vessels named.

An inspection of the invoices shows that to the entered amount of the invoices the appraiser made certain additions to make market value. No application for a reappraisement was made by the importers under the provisions of sec. 13 of the act of June 10, '90, hence duty was assessed upon the value of the mdse. as returned by the U. S. appraiser. Note S. 17302.

I have to report that the claimants have complied with the requirements of section 14 of the act of June 10, 1890, so far as lodging protest within the statutory time.

The naval officer concurs in the decision of this office.

The entries and invoices covered by the above protest are inclosed herewith.

Respectfully yours, W. E. ESTERBROOK,
Deputy Collector.

(7 inclosures.)

(Endorsed:) 24041 F—24042 F. Port of New York, collector's office, —— —, 189-. —— ——, collector. Submitting protest of ——. Received by board of U. S. general appraisers, Sep. 9, 1897.

15 EXHIBIT D.

AUG. 19, 1897.

Hon. Geo. R. Bidwell, collector port of New York.

SIR: The American Sugar Refining Company hereby protests against your decision as to the rate and amount of duty imposed upon certain sugars imported per S. S. Richmond on the 10th day of March, 1897, entry No. 39405, because the amount of duty so imposed is excessive and illegal for reasons following, to wit:

1. That although the appraisers ascertained and reported to you the actual market value and wholesale price of said sugar in the principal markets of the country whence the same was imported at the time of importation and in condition as shipped, he also appraised and returned to you the value of said merchandise in condition as landed in the United States, making report to you as follows: "Value of sugar per unit of quantity advanced from 6/8 per

cwt. 87°, the market value when shipped, to 7/9 per cwt. 87° in condition landed, owing to increased value due to drainage on the voyage of importation."

2. That you exacted duty upon the increased value in condition landed, so reported to you notwithstanding the fact that the appraiser had reported to you a lower value of the sugar at the time of shipment and in condition as shipped, which action on your part was in violation of section 19 of the act aforesaid, which requires that "the duty shall be assessed upon the market value of wholesale quantities, at the time of exportation to the United States, and in condition in which such merchandise is there bought and sold for exportation to the United States, or consigned to the United States for sale," and that the words "value" or "actual market value," wherever used in said act or in any law relating to the appraisement of imported merchandise, shall be construed to mean the actual market value or wholesale price as defined in said section.

16

Respt. yours,

THE AMERICAN SUGAR REFINING CO.,
By HENRY C. MOTT, *Attorney.*

(Endorsed:) 7211. American Sugar Ref. Co. Richmond. Sugar. Vessel, Richmond. Entry, Mar. 11, '97. Liq'ed Aug. 14, '97. Protested Aug. 20, '97. Custom-house, New York, Aug. 20, 1897. Received. 24041 F.

EXHIBIT E.

AUG. 19, 1897.

Hon. Geo. R. Bidwell, collector port of New York.

SIR: The American Sugar Refining Company hereby protests against your decision as to the rate and amount of duty imposed upon certain sugars imported per S. S Bellaura, on the 30th day of March, 1897, entry No. 51209, because the amount of duty so imposed is excessive and illegal for reasons following, to wit:

1. That although the appraisers ascertained and reported to you the actual market value and wholesale price of said sugar in the principal markets of the country whence the same was imported at the time of importation and in condition as shipped, he also appraised and returned to you the value of said merchandise in condition as landed in the United States, making report to you as follows: "Value of sugar per unit of quantity advanced from $\frac{6}{8}$ per cwt. 87°, the market value when shipped, to $\frac{7}{8}$ per cwt. 87° in condition landed, owing to increased value due to drainage on the voyage of importation."

17

2. That you exacted duty upon the increased value in condition landed, so reported to you notwithstanding the fact that the appraiser had reported to you a lower value of the sugar at the time of shipment and in condition as shipped, which action on your part was in violation of section 19, of the act aforesaid, which requires that "the duty shall be assessed upon the market value of wholesale quantities, at the time of exportation to the United States,

and in condition in which such merchandise is there bought and sold for exportation to the United States, or consigned to the United States for sale," and that the words "value" or "actual market value" wherever used in said act or in any law relating to the appraisement of imported merchandise shall be construed to mean the actual market value or wholesale price as defined in said section.

Respt. yours,

THE AMERICAN SUGAR REFINING CO.,
By HENRY C. MOTT, *Attorney.*

(Endorsed:) 7212. American Sugar Ref. Co. Bellaura sugar. Vessel, Bellaura. Entry, Mar. 30, '97. Liq'ed Aug. 14, '97. Protested Aug. 20, '97. Custom-house, New York, Aug. 20, 1897, received. 24042 F.

18

Not for publication.

EXHIBIT F.

Before the U. S. general appraisers at New York, Nov. 18, 1897.

In the Matter of the Protest 23975 F, 6504, of THE AMERICAN SUGAR REFINING CO. against the Decision of the Collector of Customs at New York as to the Rate and Amount of Duties Chargeable on Certain Merchandise Imported per Jno. Swan. Entered M'ch 15, 1897.

Opinion by Wilkinson, G. A.

The appellants appeared and submitted the case on the record.

We find upon the collector's report that duty was assessed upon the appraised value. The protest is overruled.

(Signed) H. M. SOMERVILLE,
GEO. C. TICHENOR,
CHAS. H. HAM,
Board of U. S. General Appraisers.

3 enclosures.
Entry and invoices returned herewith.
Protest received with the collector's letter of Sept. 7, 1897.

19

Not for publication.

EXHIBIT G.

Before the U. S. general appraisers at New York, Nov. 18, 1897.

In the Matter of the Protests $\frac{24041}{7211}$, $\frac{24042}{7212}$ F, of THE AMERICAN SUGAR REFINING CO. against the Decision of the Collector of Customs at New York as to the Rate and Amount of Duties Chargeable on Certain Merchandise Imported per Richmond, Entered M'ch 11, 1897; Bellaura, Entered M'ch 30, 1897.

Opinion by Wilkinson, G. A.

The appellants appeared and submitted the case on the record.

It appears that the appraiser made certain additions to market value, and no application for reappraisement was made.

We find upon the report of the collector that duty was assessed upon the value of the merchandise as returned by the U. S. appraiser.

The protest is overruled.

(Signed) H. M. SOMERVILLE,
GEO. C. TICHENOR,
CHARLES H. HAM,
Board of U. S. General Appraisers.

5 enclosures.
Entries and invoices returned herewith.
Protest received with the collector's letter of Sept. 8, 1897.

20 And for a certified statement of the facts involved in said matter, as ascertained by them, the said board states that said facts are fully set forth in the decision aforementioned, and that no other facts were ascertained by said board than such as are shown by said decision and other exhibits hereto attached.

H. M. SOMERVILLE,
CHARLES H. HAM,
Board of U. S. General Appraisers.

(Endorsed:) No. 2676. U. S. circuit court, southern district of New York. In the matter of the application of the American Sugar Refining Co. for a review of the decision of the board of U. S. general appraisers as to the rate and amount of duty on certain imported merchandise. Return of the board of U. S. general appraisers. U. S. circuit court. Filed Jan. 22, 1898. John A. Shields, clerk.

21 In the Circuit Court of the United States for the Southern District of New York.

In the Matter of the Application of THE AMERICAN SUGAR REFINING COMPANY for a Review of the Decision of the Board of United States General Appraisers as to the Rate, &c., of Duty on Certain Sugar Imported by Them in the Vessels and on the Dates Named Herein. Suit No. 2676.

Supplemental Return of the Board of United States General Appraisers to the Order of Hon. E. Henry Lacombe, Circuit Judge.

Dated New York, December 3, '98.

The board of United States general appraisers, sitting at New York, in response to the order of the court in the above matter, make the following supplemental return of the record and evidence taken by them in the above matter, and of the facts involved therein, as ascertained by them.

They state that on the 21st day of January, 1898, a return of the record and evidence was made to this court in the matter of an appeal taken by the American Sugar Refining Company, from a decision of the board of United States general appraisers as to the rate,

&c., of duty upon certain merchandise covered by their protests described as follows:

Coll's No.	Pro. No.	Protestants.	Vessel.	Date of entry.
6504	23975 F.	American Sugar Refining Co.	Jno. Swan.	M'ch 15, '97.
7211	24041 F.	"	Richmond.	M'ch 11, '97.
7212	24042 F.	"	Bellaura.	M'ch 30, '97.

22 On an examination of the decision (Exhibit "G") in the return in this case, it appears that a clerical error was made in the omission of the word "make," at the end of the second line thereof. The same should read, as it does read in the original minutes of said decision, "that the appraiser made certain additions to make market value," instead of "that the appraiser made certain additions to market value."

This supplemental return is made simply to correct such clerical error.

And for a certified statement of the facts involved in said matter, as ascertained by them, the said board states that said facts are fully set forth in the decision aforementioned, and that no other facts were ascertained by said board than such as are shown by said decision and other exhibits hereto attached.

H. M. SOMERVILLE,
GEO. C. TICHENOR,
J. B. WILKINSON, JR.,
Board of U. S. General Appraisers.

(Endorsed:) No. 2676. U. S. circuit court for the southern district of New York. In the matter of the application of the American Sugar Refining Co. for a review of the decision of the board of U. S. general appraisers as to the rate and amount of duty on certain imported merchandise. Supplemental return of the board of U. S. general appraisers. U. S. circuit court. Filed Dec. 5, 1898. John A. Shields, clerk.

23 U. S. Circuit Court, Southern District of New York.

In the Matter of the Application of THE AMERICAN SUGAR REFINING COMPANY for a Review of the Decision of the Board of General Appraisers as to the Rate and Amount of Duty on Certain Merchandise Imported by The American Sugar Refining Company, a Corporation Incorporated under the Laws of the State of New Jersey, per Jno. Swan, March 15, 1897; per Richmond, March 11, 1897; per Bellaura, March 30, 1897. Protest Nos. 23975 F—6504, 24041 F—7211, 24042 F—7212.

It is hereby stipulated and agreed that the word "reversed" in folio 7 of the petition of the American Sugar Refining Company herein, should read "affirmed;" so that the clause beginning on line two, at the top of page 3 of said petition, shall read: "Whereupon the invoices and all papers and exhibits connected therewith

were duly transmitted to the said board of general appraisers, which board proceeding to hear and determine the question of law
24 and fact involved, affirmed the collector's said decision in the premises."

Dated New York, January 24, 1898.

JOHN E. PARSONS,
Solicitor for Petitioner.
HENRY L. BURNETT,
United States District Attorney.
H. C. P.

So ordered.
E. H. LACOMBE,
U. S. Cir. Judge.

(Endorsed:) U. S. circuit court, southern district of New York. In the matter of the application of the American Sugar Refining Company for a review of the decision of the board of general appraisers, &c. Stipulation & order. U. S. circuit court. Filed January 24, 1898. John A. Shields, clerk.

25 Circuit Court of the United States for the Southern District of New York.

In the Matter of the Application of THE AMERICAN SUGAR REFINING COMPANY for a Review of the Decision of the Board of U. S. General Appraisers as to the Rate, &c., of Duty on Certain Sugar Imported by Them in the Vessels and on the Dates Named Therein. Suit No. 2676.

To the circuit court of the United States for the southern district of New York:

The American Sugar Refining Company hereby applies for an order referring the above-entitled suit to one of the United States general appraisers as an officer of the court, to take and return to the court such further evidence as may be offered by the American Sugar Refining Company.

PARSONS, SHEPARD & OGDEN,
Solicitors for American Sugar Refining Company.

26 At a stated term of the circuit court of the United States of America for the southern district of New York, held at the United States circuit court rooms, in the post-office building, in the city of New York, on the 9th day of February, 1898.

Present: Hon. E. Henry Lacombe, circuit judge.

In the Matter of the Application of THE AMERICAN SUGAR REFINING COMPANY for a Review of the Decision of the Board of United States General Appraisers as to the Rate, &c., of Duty on Certain Sugar Imported by Them in the Vessels and on the Dates Named Herein. Suit No. 2676.

On application of the American Sugar Refining Company, through its solicitors, Parsons, Shepard & Ogden, it is—

Ordered, that this cause be referred to Hon. George H. Sharpe, one of the United States general appraisers, as an officer of this court, to take and return to this court such further evidence herein as may be offered by the said American Sugar Refining Company, and that the attorney for the United States and for the collector of the port of New York have reasonable notice of the time and place of taking such further evidence.

E. H. LACOMBE,
U. S. Circuit Judge.

27 (Endorsed:) U. S. circuit court, southern district of New York. In the matter of the application of the American Sugar Refining Company for a review of the decision of the board of U. S. general appraisers as to the rate, &c. Suit No. 2676. Order of reference. Parsons, Shepard & Ogden, solicitors for the American Sugar Refining Company, 111 Broadway, New York, N. Y. U. S. circuit court. Filed Feb. 9, 1898. John A. Shields, clerk.

At a stated term of the circuit court of the United States of America for the southern district of New York, held at the United States circuit court rooms, in the post-office building, in the city of New York, on the — day of April, 1898.

Present: Hon. E. Henry Lacombe, circuit judge.

In the Matter of the Application of THE AMERICAN SUGAR REFINING COMPANY for a Review of the Decision of the Board of U. S. General Appraisers as to the Rate, &c., of Duty on Certain Sugar Imported by Them in the Vessels and on the Dates Named Herein. Suit No. 2676.

On the annexed consent, and on the application of the American Sugar Refining Company, through its solicitors, Parsons, Shepard & Ogden, it is—

28 Ordered, that the time to take further evidence and return the same to this court, pursuant to the order dated February 9, 1898, be and it hereby is extended sixty days from date.

E. H. LACOMBE.

The above order is hereby consented to.

HENRY L. BURNETT,
U. S. Attorney.

(Endorsed:) U. S. circuit court, southern district of New York. In the matter of the application of the American Sugar Refining Company for a review of the decision of the board of U. S. general appraisers as to the rate, &c. Suit No. 2676. Order. Parsons, Shepard & Ogden, solicitors for American Sugar Refining Company, 111 Broadway, New York, N. Y. U. S. circuit court. Filed Apr. 8, 1898. John A. Shields, clerk.

United States Circuit Court, Southern District of New York.

THE AMERICAN SUGAR REFINING CO. vs. UNITED STATES. } No. 2676.

To the circuit court of the United States for the southern district of New York:

The undersigned, a general appraiser under the act of June 10, 1890, to whom it was referred by this honorable court by an order made February 9, 1898, to take further evidence in the above-
29 entitled matter, do hereby return such further evidence taken by me pursuant to such order.

Dated New York, April 25, 1898.

GEORGE H. SHARPE,
United States General Appraiser, as an Officer of the Court.

United States Circuit Court, Southern District of New York.

THE AMERICAN SUGAR REFINING CO. vs. UNITED STATES. } No. 2676.

Before Hon. George H. Sharpe, as an officer of the court.

NEW YORK, *April* 6, 1898.

Appearances.

For the importers: H. S. Closson and A. K. Tingle.
For the United States: Henry C. Platt, ass't U. S. att'y.

Mr. CLOSSON: I produce from the files of the custom-house in the case of the entry by the John Swan and offer in evidence the report to the collector of the appraiser of merchandise, dated July 7, 1895. The report is as follows:

"To the collector: Pursuant to department letter of Sep-
30 tember 21, 1895, etc., I respectfully report upon invoice hereunto annexed as follows: Value of sugar per unit of quantity advanced from 6s. 8d. cwt. 87° the market value when shipped to 7s. 9d. cwt. 87° in the condition landed, owing to its increased value due to drainage on the voyage of importation. Invoice No. 9823; importer, A. S. Ref. Co.; vessel, John Swan."

In the case of the Richmond I offer in evidence the similar report of the appraiser to the collector, dated July 7, 1897, said report having been produced from the files of the custom-house. It reads as follows:

"* * * Value of sugar per unit of quantity advanced from 6s. 8d. cwt. 87°, the market value when shipped to 7s. 9d. cwt. 87° in the condition landed, owing to its increased value due to drainage on the voyage of importation. Invoice No. 8078; importer, A. S. Ref. Co.: vessel, Richmond."

And in the case of the Bellaura, there are two invoices and two

reports, which have been produced from the files of the custom-house. The reports both read the same, and are as follows:

"* * * Value of sugar per unit of quantity advanced from 7s. 2d. cwt. 86°, the market value when shipped to 7s. 11½d. cwt. 86° in the condition landed, owing to its increased value due to drainage on the voyage of importation. Invoice Nos. 22396–7; importer, A. S. Ref. Co.; vessel, Bellaura; date, May 10th, 1897."

It is stipulated by and between the parties hereto, that the entries and invoices produced from the custom-house, relating to the importations in this suit, are considered as in evidence herein.

It is admitted by counsel for the importers that the initials "W. C. J." attached to said reports, are those of William C. Jacobs, examiner of sugar in the appraiser's office.

Adjourned to April 13, 1898, 11 a. m.

31 THE AMERICAN SUGAR REFINING COMPANY
vs.
UNITED STATES.

Hearing resumed April 13, 1898.

Appearances.

For the importers: H. B. Closson and A. K. Tingle.
For the United States: Henry C. Platt, ass't U. S. att'y.

WILLIAM C. JACOBS, called as a witness on behalf of the United States, being duly sworn, testified as follows:

By Mr. PLATT:

Q. Mr. Jacobs, what is your official position?
A. Examiner—sugar examiner.
Q. At the appraiser's office in this city, this district?
A. Yes.
Q. How long have you held that position?
A. Since 1885.
Q. And in that position have you become familiar with the importations of sugar?
A. Yes, sir.
Q. From various countries to the United States?
A. Yes.
Q. I call your attention to the entry in this case by the John Swan, and to the report of the appraiser to the collector dated July 7, 1895. Is that there?
A. Yes.
Q. Did you make that report?
A. Mr. Remsen made the report.
Q. Did you examine the sugar on that importation?
A. I made the value.
Q. That report on that entry isn't in your handwriting, is it?
A. No, sir; that is Mr. Remsen's; he made the returns on the invoice.

Q. Are your initials on there anywhere, Mr. Jacobs?

A. No, sir; we had a ticket attached to the invoice, which
32 I made the value on; that don't go down officially; that is kept in the official records up in the stores.

Q. Is there nothing on those reports initialed by you in the case of John Swan, and the Richmond and the Bellaura?

A. No, sir; my official work is at the appraiser's office. On each one of those are pinned a ticket on which I make the return of the values. Then the writing up of the invoices is a mere form.

Q. You examined the sugar in these importations?

A. Yes, sir.

Q. And you made out the value?

A. Made the value.

Q. And that value, was it or was it not the market value of the goods at the time and place of exportation?

Mr. CLOSSON: That is the identical question which was objected to and excluded on my examination at the previous hearing. I asked the same question of Mr. Sharretts and it was held that I was not permitted to ask that.

Mr. PLATT: I had special reference to the time and place of exportation, not as to whether the market value was correct or not, but what market value his finding had reference to. He speaks of "market value" in his finding. What market value?

Q. What market value had you reference to in making your memorandum of the value of this sugar?

Mr. CLOSSON: I do not understand now that it appears that the witness made any return. He says that another man made the return. We understood that the papers which have been put in evidence had on them the initials "W. C. J."

Q. Your initials are not on the invoice?

A. Not on the return, what I call the return.

Q. The return is on the invoice?

A. The return is on the invoice.

Q. Are they attached to the reports?

A. There is a report on a department decision, another matter entirely.

33 Q. And your initials "W. C. J." are on those?

A. They are on all those.

Mr. CLOSSON: May it not appear that his initials are on the four returns which we put in evidence at the last hearing.

The WITNESS: That is in connection with instructions of the department on another matter.

Q. Are those initials which appear on the papers put in evidence at the last hearing your initials?

A. They are on the reports.

Q. Now, I repeat my question: What market value had you reference to in making your memorandum of the value of this sugar?

Mr. CLOSSON: I object to that question on the ground that the re-

turn or report shows on its face the market value taken and it is not competent by this witness to elicit testimony tending to show that some other value than that there stated was in fact adopted.

Objection overruled. Mr. Closson excepts.

A. The market value is the value of the sugars we examined at the port of shipment, the sugars we examined.

Q. At the port of shipment?

A. Yes, sir.

Q. In Brazil?

A. Yes, sir; wherever it may be.

Q. But in this case it was Brazil?

A. Yes.

Q. You mean by that the value at the port of shipment of the sugars you examined here?

A. Of the sugars we examined here.

Cross-examination by Mr. Closson:

Q. This so-called report bearing your initials contains this statement: "Value of sugar per unit of quantity advanced from 6s. 8d. cwt. 87°, the market value when shipped to 7s. 9d. cwt. 87° in the condition landed." Do I understand by the phrase "the market value when shipped" you intended the market value at the port of shipment and at the time of shipment?

A. We are expected——

34 Q. I must ask you to answer that?

A. I know nothing about that in one sense of the word. I took that merely with reference to the evidence given.

Question repeated and read to witness.

Q. Isn't that what you mean when you use the words: "The market value when shipped"?

A. If the memorandum and papers and contracts of the merchants are correct; I know nothing of that. An explanation of that order might show why that was done. It is a conceded fact that these sugars drain and moisture evaporates, although we have received sugar in almost exactly the same state as it was when it was shipped; we do receive sugar that hasn't drained a particle, Brazil sugars. If they stay in the storehouse there and drain there, when they get in the vessel their drain is through and they don't drain on the voyage. If they buy them green they will drain. Consequently an appraiser can't tell whether the sugars were bought green or whether they were bought drained. But we thought it was an injustice when the proof showed that the merchants had no intention of defrauding the revenue. I went personally to the Secretary himself, called down there and went over this matter with him, and he gave us the privilege of taking all the evidence, placing the evidence before us, reading it, and if we thought the statement was all right and truthful, we could state what we thought the drainage would be or had been, and what the value would have been had such occurred, and we gave the merchants the benefit of that.

Q. When you say "Secretary," you mean the Secretary of the Treasury?

A. The Secretary of the Treasury. It was done merely to help the merchants escape the penalty. That is how they came to be made out.

Q. You have stated, Mr. Jacobs, that it is a conceded fact that these Brazil sugars drain and they evaporate?

A. When bought green.

35 Q. Are you speaking of what goes on during the voyage?

A. It makes no difference where they are; they will drain anywhere.

Q. When they are packed in the hold of a vessel, with the hatches down, the evaporation is necessarily small, is it not, if any occurs?

A. The evaporation is small? Why so? The drainage takes place.

Q. But evaporation?

A. The evaporation should not be very large.

Q. The loss is almost wholly due in such cases to drainage?

A. Drainage; yes.

Q. What is drained off is molasses, is it not?

A. Generally turns into molasses; yes. What we call drainage may be very thick; it might be worth considerable and might not be worth much.

Q. It depends on the amount of moisture in the sugar?

A. Yes, and the thickness of the syrup.

Q. Whatever drains away goes into the bilge water and is lost, does it not?

A. Not necessarily; they may sell it; the Brazil pumpings are sold; it is too fine an article to throw away; trashy stuff is thrown away, but not Brazils, because the drainage is too rich.

Q. Do you know of any of the drainage in any of these cargoes being sold?

A. Yes, sir.

Q. Do you know what did become of it?

A. I know that a man by the name of O'Hare buys a lot of it.

Q. He buys it from the captains of the vessels, doesn't he?

A. He invoices it and pays the duty on it.

Q. You mean O'Hare?

A. He is one of them. There are three or four of them.

By Mr. TINGLE:

Q. How is it classified?

A. Pumpings or drainage; now if it should come up to a certain standard we would classify it as molasses; if it would come up higher than that we would classify it as sugar.

36 Q. How, under the ad valorem tariff?

A. The same thing.

Q. What rate of duty?

A. Forty per cent.; the same as sugar.

By Mr. CLOSSON:

Q. Will you examine these entries which I show you, being the entries in this suit, and state whether it appears from the record that any part of that drainage was entered by the American Sugar Refining Co.?

A. It was not, I don't think. I know they didn't enter them.

Q. If it was entered by any one, it was entered by some one in O'Hare's line of business?

A. I suppose so.

By Mr. PLATT:

Q. Do you know whether the importers in this case made any claim for any loss or damage on these importations on the voyage?

A. No, sir; they did not.

Q. Any damage allowance?

A. Not as I know of; I don't believe they did.

By Mr. CLOSSON:

Q. Mr. Jacobs, you know Mr. Sherer, do you not, who had testified in this proceeding?

A. Yes.

Q. How long have you known him?

A. I should judge I have known him in the neighborhood of sixteen years; I can't tell exactly.

Q. You know him as an expert sugar chemist?

A. As a chemist; yes.

Q. Have you not constantly met him as a sugar chemist of late years?

A. No, not as a sugar chemist.

Mr. PLATT: It is conceded that Mr. Sherer is an expert chemist.

Mr. CLOSSON: That is all the testimony we shall offer, with the possible exception of one witness on this question of drainage.

Adjourned to April 20, 1898, 11 a. m.

37 NEW YORK, *April* 20, 1898.

(Importers rest—Government rests.)
(Testimony closed.)

United States Circuit Court, Southern District of New York.

AMERICAN SUGAR REFINING COMPANY *vs.* THE UNITED STATES. } Nos. 2676 and 2689.
SAME *vs.* SAME.

TOWNSEND, *District Judge:*

Certain moist or green sugars were brought from Brazil into the port of New York while the act of 1894 was in force, upon which

duty was assessed at forty per cent. ad valorem under the provisions of paragraph 182½ of said act. It appears that there is an understanding, acquiesced in generally by shippers, importers and appraisers, that as the moist sugars from Brazil lose from fourteen to sixteen per cent. in weight on the voyage by drainage and evaporation, this percentage of loss shall be generally accepted as a basis of settlement of value at the port of entry. The board of appraisers, acting upon the basis of this so-called settlement, assumed such a loss of weight, and found, not the actual market value of the
38 green sugar as shipped from Brazil, but the increased market value of the dry sugar when it reached the port of New York. Thus the appraisers advanced the valuation of the sugar in the first importation from 6s. 8d. per cwt. 87°, the market value when shipped, to 7s. 9d. per cwt. 87°, owing to its increase in value from drainage on the voyage, and made similar advances in the other importations.

The question presented by these appeals is, whether the appraiser was authorized in thus advancing the valuation of the sugar, and whether the assessment of duty upon such advanced valuation is valid.

Section 10 of the customs administrative act of 1890 provides, *inter alia*, as follows:

"That it shall be the duty of the appraisers of the United States to ascertain, estimate and appraise the actual market value and wholesale price of the merchandise at the time of exportation to the United States in the principal markets of the country whence the same has been imported."

Counsel for the importer contends that this language refers to the merchandise in its condition in the foreign port and its actual value at the time of exportation to the United States, in the principal markets of the country whence it is imported. He claims that the phrase "actual market value of the merchandise" could not refer to the merchandise in its condition when it reached the port of New York, because such valuation would be merely speculative, within the reasoning in United States *vs.* Southmayd *et al.*, 9 How., 637, and Merritt *vs.* Welsh, 104 U. S., 694.

Counsel for the Government contends that the language of section 10 refers to the value in the foreign market of said merchandise in the condition in which it arrives at the port of New York. He claims that the mode adopted by the appraisers results in finding the actual market value at its place of exportation of such sugar as reaches this port.

39 Owing to drainage, there are less pounds of sugar on arrival here than when the ship left Brazil, but the cargo is actually worth as much as when it started. It appears, therefore, that if the sugar had been kept for the same length of time in Brazil, the same loss in weight by drainage and increase in value per pound would have taken place there, and the value of the cargo as a whole would not have been affected thereby. If this be so, I do not think the importers should gain by the decrease in weight coupled with an increase in value per pound. Unless, therefore, the appraisers

have acted in bad faith or have clearly committed a substantial error by their mode of ascertaining the market value in Brazil of the sugar on its arrival here, their decision should be affirmed. I am unable to find any such mistake or error (Passavant *vs.* U. S., 148 U. S., 214).

This construction is supported by the statement of Mr. Justice Curtis in Austin *vs.* Peaslee, 2 Fed. Cas., 235, that "the merchant is to pay duties on what is actually imported, not what is put up for export in the foreign country," and of Judge Colt, in Weaver *vs.* Sterry, 38 Fed., 493, that the true construction of the law is to assess duty only upon the quantity which arrives in port, and not upon the quantity which appears by the invoice to have been shipped, and by the language of Judge Lacombe in charging the jury in Reiss *vs.* Magone, 39 Fed., 105, that if what reaches this country has become more valuable by reason of shrinkage, it should, in fairness, be assessed at the higher value.

The decision of the board of general appraisers is affirmed.

For the importers—H. S. Closson and A. K. Tingle.
For the United States—Henry C. Platt.

(Endorsed:) U. S. circuit court. Filed Jan. 21, 1899. John A. Shields, clerk.

January 19, 1899.

40 At a stated term of the circuit court of the United States of America, for the southern district of New York, held at the United States circuit court rooms, in the post-office building, in the city of New York, on the 3d day of February, in the year of our Lord one thousand eight hundred and ninety-nine.

Present: The Hon. William K. Townsend, judge.

AMERICAN SUGAR REFINING COMPANY *vs.* UNITED STATES. } "A." Suit No. 2676.

The above cause coming on for hearing and determination before this court on the application of American Sugar Refining Company, importers, for a review of the questions of law and fact involved in the decisions of the board of U. S. general appraisers herein, and on the return of the board of general appraisers of the record and evidence taken by them, with their certified statement of the facts involved therein, together with their decisions thereon, and on further evidence taken therein:

Now, after hearing Henry C. Platt, assistant U. S. attorney, on behalf of the United States, for affirmance, and John E. Parsons, Esquire, of counsel for the said importers, for reversal, on motion of Henry L. Burnett, U. S. attorney, it is—

Ordered, adjudged and decreed, that there was no error in
41 said proceedings before said board of general appraisers, and that their decisions herein be and the same are hereby in all things affirmed.

WM. K. TOWNSEND,
U. S. Judge.

(Endorsed :) "A." Suit No. 2676. U. S. circuit court, southern district of New York. American Sugar Refining Company *vs.* United States. Judgment of affirmance. Henry L. Burnett, U. S. attorney. U. S. circuit court. Filed Feb. 2, 1899. John A. Shields, clerk.

United States Circuit Court of Appeals for the Second Circuit.

THE AMERICAN SUGAR REFINING COMPANY, Importer, Appellant,
against
THE UNITED STATES OF AMERICA, Appellee.

Now comes before the honorable the justices of the United States circuit court of appeals for the second circuit, the said The American Sugar Refining Company, importer, appellant, by John E. Parsons, its attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit:

I. In that the circuit court affirmed the decision of the board of general appraisers confirming the decision of the collector of
42 the port of New York, which held that the duty on the importation herein was assessed upon the appraised value thereof.

II. In that the circuit court did not hold that such duty ought to have been assessed and was not assessed upon the actual market value or wholesale price of such merchandise as bought and sold in usual wholesale quantities at the time of exportation to the United States in the principal markets of the country from whence imported and in the condition in which such merchandise is there bought and sold for exportation to the United States or consigned to the United States for sale.

III. In that the circuit court held that the appraisers were authorized in advancing the value of the sugar from its actual market value when shipped as bought and sold in usual wholesale quantities at the time of the exportation to the United States in the principal markets of the country from whence imported, and in the condition in which such merchandise is there bought and sold for exportation to the United States or consigned to the United States for sale, to a sum larger than such market value by a sum supposed to represent the increase in value from drainage on the voyage of so much of such sugar as actually arrived at the port of New York; and in that the circuit court held that the assessment of duty upon such advanced valuation is valid.

IV. In that the circuit court did not hold that any advance in the value of the sugar occurring subsequently to the date of the shipment thereof, from the place whence imported and due to changes in its condition occurring subsequently to its importation therefrom, does not constitute an element of dutiable value.

V. In that the circuit court did not reverse the said decis-
43 ion of the board of general appraisers and direct the collector to liquidate the entry on the basis of the actual market value or wholesale price of such merchandise as bought and sold in usual

wholesale quantities at the time of exportation to the United States in the principal markets of the country, whence imported and in the condition in which such merchandise is there bought and sold for exportation to the United States or consigned to the United States for sale; and to disregard any supposed subsequent increase in value from drainage on the voyage of so much of such sugar as actually arrived at the port of New York.

JNO. E. PARSONS,
Attorney for the American Sugar Refining Company, Importer.

(Endorsed:) No. 2676. U. S. circuit court of appeals for the second circuit. The American Sugar Refining Company, importer, appellant, against The United States of America, appellee. Assignment of errors. Jno. E. Parsons, attorney for importer, 111 Broadway, borough of Manhattan, New York city, N. Y. U. S. circuit court. Filed Feb. 27, 1899. John A. Shields, clerk.

44 United States Circuit Court of Appeals for the Second Circuit.

THE AMERICAN SUGAR REFINING COMPANY, Appellant,
vs.
THE UNITED STATES OF AMERICA, Appellee. } "A." Suit No. 2676.

The United States comes into court and says that there is no error either in the record or proceedings or in the giving of the judgment aforesaid, and prays that the said circuit court of appeals may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed.

HENRY L. BURNETT,
U. S. Attorney, for The United States, Appellee.

(Endorsed:) "A." Suit No. 2676. U. S. circuit court of appeals for the second circuit. The American Sugar Refining Company, appellant, *vs.* The United States of America, appellee. Joinder in error. Henry L. Burnett, U. S. attorney, for appellee. To John E. Parsons, Esq., attorney for appellant. Due service of a copy of the within joinder in error is hereby admitted. Dated New York, March 2nd, 1899. John E. Parsons, attorney for appellant. U. S. circuit court. Filed Mar. 2, 1899. John A. Shields, clerk.

45 United States Circuit Court for the Southern District of New York.

THE AMERICAN SUGAR REFINING COMPANY, Importer, Appellant,
against
THE UNITED STATES OF AMERICA, Appellee.

Know all men by these presents, that we, the American Sugar Refining Company, as principal, and Henry C. Mott, as surety, are

held and firmly bound unto the United States of America, in the sum of two hundred and fifty dollars ($250), to be paid to the United States of America, for the payment of which well and truly to be made we bind ourselves, our successors, heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals. Dated New York, the 24th day of February, 1899.

Whereas, the above-named American Sugar Refining Company has prosecuted an appeal to the United States circuit court of appeals for the second circuit from the decision and judgment rendered in the above-entitled suit or proceeding by the circuit court of the United States for the southern district of New York, on the 2d day of February, 1899:

Now, therefore, the condition of this obligation is such that if the above-named The American Sugar Refining Company shall prosecute said appeal to effect, and if it shall fail to make its plea
46 good, answer all damages and costs, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

Sealed and delivered and taken and acknowledged this 24th day of February, 1899.

THE AMERICAN SUGAR REFINING CO. [SEAL.]
H. O. HAVEMEYER, *President.*
[SEAL.] HENRY C. MOTT.

Attest: C. R. HEIKE, *Sec'y.*

(2 stamps.)

UNITED STATES OF AMERICA, } ss:
State of New York, County of New York, }

On this 24th day of February, 1899, before me personally came H. O. Havemeyer and C. R. Heike, to me known, who being by me duly sworn, did depose and say, the said H. O. Havemeyer, that he resided in the town of Stamford, State of Connecticut; that he is the president of the American Sugar Refining Company; and the said C. R. Heike, that he resided at Jersey City, State of New Jersey; that he is the secretary of the American Sugar Refining Company, the corporation described in and which executed the above bond; and each for himself did say that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed to said instrument by order of the board of directors of said corporation; and that each signed his name thereto by like order.

ROB'T H. HUTCHINS,
[SEAL.] *Notary Public, N. Y. Co.*

47 UNITED STATES OF AMERICA, *Southern District of New York,* } ss.:

Henry C. Mott, being duly sworn, says: That he is a resident of the eastern district of New York; that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

HENRY C. MOTT.

Sworn to before me this 24th day of February, 1899.

ROB'T H. HUTCHINS,
[SEAL.] *Notary Public, N. Y. Co.*

This bond is approved as to form and amount and sufficiency of surety.

Dated February 27, 1899.

____ ____,
U. S. Circuit Judge.

(Endorsed:) United States circuit court for the southern district of New York. No. 2676. The American Sugar Refining Company, importer, appellant, against The United States of America, appellee. Bond. John E. Parsons, attorney for appellant, 111 Broadway, borough of Manhattan, city of New York, N. Y. Approved as to form and also as to sufficiency of sureties, with reservation, however, to the appellee of the right at any time to examine the sureties under oath touching their liabilities and financial condition generally. E. Henry Lacombe, U. S. circuit judge. U. S. circuit court. Filed Feb. 28, 1899. John A. Shields, clerk.

48 United States Circuit Court, Southern District of New York.

THE AMERICAN SUGAR REFINING COMPANY, Importer, Appellant,
against
THE UNITED STATES OF AMERICA, Appellee. } No. 2676.

You will please take notice that the American Sugar Refining Company, the importer herein, appeals to the United States circuit court of appeals for the second circuit from the decision and judgment of this court rendered herein and entered on the 2d day of February, 1899.

Dated New York, February 25, 1899.

Yours, &c.,
JOHN E. PARSONS,
Attorney for American Sugar Refining Co., Importer, Appellant.

To Henry L. Burnett, Esq., United States attorney.

(Endorsed:) No. 2676. United States circuit court, southern district of New York. The American Sugar Refining Company, importer, appellant, against The United States of America, appellee. Notice of appeal. John E. Parsons, attorney for appellant, 111 Broadway, borough of Manhattan, city of New York, N. Y. U. S. circuit court. Filed Feb. 27, 1899. John A. Shields, clerk.

49 United States Circuit Court of Appeals for the Second Circuit.

THE AMERICAN SUGAR REFINING COMPANY, Importer, Appellant,
against
THE UNITED STATES OF AMERICA, Appellee.

To the United States circuit court of appeals for the second circuit:

The American Sugar Refining Company, the importer herein, hereby applies for the allowance of an appeal to the United States circuit court of appeals for the second circuit from the decision and judgment of the circuit court of the United States for the southern district of New York, entered herein on the 2d day of February, 1899.

Dated February 25, 1899.

Yours, &c.,
JOHN E. PARSONS,
Attorney for the American Sugar Refining Co., Importer.

The foregoing application is granted and appeal allowed.

Dated New York, February 27, 1899.

E. HENRY LACOMBE,
U. S. Circuit Judge.

(Endorsed:) No. 2676. United States circuit court of appeals for the second circuit. The American Sugar Refining Company,
50 importer, appellant, against United States of America, appellee. Petition for appeal. John E. Parsons, attorney for appellant, 111 Broadway, borough of Manhattan, city of New York. N. Y. A copy of the within paper has been this day received at this office. Feb. 28, 1899. Henry L. Burnett, U. S. attorney. U. S. circuit court. Filed Mar. 1, 1899. John A. Shields, clerk.

UNITED STATES OF AMERICA, *ss:*

To United States of America:

You are hereby cited and admonished to be and appear before the United States circuit court of appeals for the second circuit, at the city of New York, on the 20th day of March, 1899, pursuant to an appeal on the part of The American Sugar Refining Company, importer herein, filed in the clerk's office of the circuit court of the United States for the southern district of New York, in a certain suit or proceeding entitled "The American Sugar Refining Company, importer, appellant, against The United States of America, appellee," to show cause, if any there be, why the decision of the United States circuit court in the said appeal mentioned should not be reversed, modified or corrected, and speedy justice should not be done in that behalf.

Given under our hand at the city of New York, in the southern district of New York, the 27th day of February, 1899.

E. H. LACOMBE,
U. S. Circuit Judge.

JOHN E. PARSONS,
Attorney for American Sugar Refining Co., Importer and Appellant Herein.

(Endorsed:) E. & A. B. No. 2676. U. S. circuit court of appeals for the second circuit. The American Sugar Refining Com-
51 pany, appellant, against The United States of America, appellee. Citation. John E. Parsons, attorney for appellant, 111 Broadway, New York, N. Y. A copy of the within paper has been this day received at this office. Feb. 28, 1899. Henry L. Burnett, U. S. attorney. U. S. circuit court. Filed Mar. 1, 1899. John A. Shields, clerk.

UNITED STATES OF AMERICA,
Southern District of New York, } ss:

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one (1) to fifty-seven (57) inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of The American Sugar Refining Company, appellant, against The United States of America, appellee (suit No. 2676), as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this twentieth day of March, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the said United States the one hundred and twenty-third.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

(Stamp.)

52 United States Circuit Court of Appeals for the Second Circuit.

Nos. 34 and 35, October Term, 1899.

Submitted December 19, 1899; decided January 24, 1900.

THE AMERICAN SUGAR REFINING COMPANY, Appellant,
vs.
THE UNITED STATES, Appellee. } (2676.)

THE SAME, Appellant,
vs.
THE SAME, Appellee. } (2689.)

Appeals from the circuit court of the United States for the southern district of New York.

Before Judges Wallace, Lacombe, and Shipman.

SHIPMAN, *Circuit Judge:*

These two appeals from the circuit court for the southern district of New York involve the same question. In suit 2676, the American Sugar Refining Company imported from Brazil in March, 1897, certain sugars by the John Swan, the Richmond and by the Bellaura,

which were assessed for duty at forty per cent. under the tariff act of August 28, 1894. In January, 1895, the same importer imported, also from Brazil, by the Cuvier, other sugar, which was assessed at the same rate of duty. Brazilian sugars when bought in Brazil immediately after the manufacture are wet, and lose weight
53 upon the voyage to the port of entry, mainly by drainage, from ten to sixteen per cent., but they gain in value, because the drier the sugar the higher its test and there is a corresponding increase in value. This drainage is peculiar to Brazilian sugars though it exists to some extent in sugars from Puerto Rico. "It has, therefore, become customary to insert in the contract of sale, a guarantee that the loss in weight shall be a certain percentage, estimated by experts as the probable drainage of the particular cargo. If the loss is less than the stipulated percentage, the seller receives an additional payment in proportion; if it is greater he makes a corresponding allowance from the purchase price." This is called the basis of settlement and upon that ascertained amount of loss by drainage the appraisement was made in these cases. For example, in the case of the Bellaura the appraiser reported to the collector as follows: "The value of sugar per unit of quantity advanced from 7s. 2d. cwt. 86°, the market value when shipped, to 7s. 11½d. cwt. 86°, in the condition landed, owing to its increased value due to drainage on the voyage of importation." The importers protested that, under the proper construction of the statute, the rate and amount of duty chargeable upon the merchandise could be only on its market value, when shipped, and that duty upon "its increased value due to drainage on the voyage of importation," was illegally exacted. The collector's construction of the statute was affirmed by the board of appraisers and by the circuit court.

The question in the case is whether this increase of value on account of drainage during the voyage is not illegal because in violation of section 19 of the customs administrative act of June 10, 1890, which is as follows:

"SEC. 19. That whenever imported merchandise is subject to an ad valorem rate of duty, or to a duty based upon or regulated in any manner by the value thereof, the duty shall be assessed upon the actual market value or wholesale price of such merchandise as bought and sold in usual wholesale quantities, at the time of
54 exportation to the United States, in the principal markets of the country from whence imported, and in the condition in which such merchandise is there bought and sold for exportation to the United States, or consigned to the United States for sale, including the value of all cartons, cases, crates, boxes, sacks and coverings of any kind, and all other costs, charges and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States, and if there be used for covering or holding imported merchandise, whether dutiable or free, any unusual article or form designed for use otherwise than in a *bona fide* transportation of such merchandise to the United States, additional duty shall be levied and collected upon such material or article at the rate to which the same would be subject if separately imported. That the words

'value' or 'actual market value' whenever used in this act or in any law relating to the appraisement of imported merchandise shall be construed to mean the actual market value or wholesale market price as defined in this section."

Prior to the passage of this act, the statutory provision on this subject had been the following:

Revised Statutes, sect. 2906:

"When an ad valorem rate of duty is imposed on any imported merchandise * * * the collector within whose district the same shall be imported or entered, shall cause the actual market value or wholesale price thereof, at the period of the exportation to the United States, in the principal markets of the country from which the same has been imported, to be appraised; and such appraised value shall be considered the value upon which duty shall be assessed."

The appellant insists that in the new section, in addition to the old requirement that the duty shall be assessed upon the actual market value or wholesale price in Brazil, the direction was carefully inserted that the value shall be upon the merchandise "in the condition in which the merchandise is there bought for exportation to the United States," and that this clause directly instructs
55 the appraisers to assess the value upon the sugar in the condition of moisture in which it is bought.

It was well settled by early decisions that if the quantity or weight stated in the invoice has been diminished by leakage or similar loss, the duty should be chargeable upon the quantity actually imported into this country (Marriot *v.* Brune, 9 How., 619; U. S. *v.* Southmayd, *id.*, 637); and the appellant asserts that whether the diminished quantity of sugar received at the port of entry is dry or wet, its value must be ascertained by the wholesale market price of the sugar in the condition in which it was bought for exportation, and if green sugar was bought, its enhanced value by drainage cannot be considered and that there is no statutory authority for endeavoring to ascertain what the dried sugar would have cost in Brazil if it had been bought in a dried state.

The question is of the legality of the appraisal, not of its accuracy, or its equity, but simply whether it is permitted by the statute, and that depends upon the meaning of the words "in the condition in which the merchandise is bought for exportation." The construction of the statute which would compel an ascertainment of value as the sugar was bought in Brazil when wet, though justified by the language of the statute if literally construed, is not sound. The intention of the statute was that the value of the imported merchandise shall be ascertained in accordance with the wholesale price of such merchandise in the principal markets from whence imported, in the condition in which such merchandise is there sold for exportation, whether packed or unpacked, specially prepared for a voyage or unprepared, and the expenses incident to placing the merchandise in condition for shipment are to be taken into account. The statute was not looking to the peculiar circumstances incident to any article which necessarily changed its value during a few weeks

wherever it was stored, and did not demand that the market price of sugar if bought green shall be the only standard for assessment
56 though it forthwith begins to lose in weight and to increase in value per pound. It is true that the word "condition" is broad enough to include any state or situation, but, as used in section 19, it was not intended to limit the appraiser to a condition which existed at the time of the purchase, but was immediately to become altered and to change until a new condition and value was reached. When the word is construed, the intent of the lawmaker in the section as a whole is to be regarded, which was to assess duty upon the value in the state or condition of the preparedness of the merchandise for shipment when sold, and to include the expenses of subsequent preparation, and thus to prescribe with more particularity and accuracy than had been done in section 2906 of the Revised Statutes the particulars which must enter into the assessment of value. The Brazilian sugar will, after its manufacture, surely lose weight by lapse of time and it is sometimes stored in Brazil until it becomes dry. It is not material whether it becomes dry by subsequent storage and drainage in Brazil or whether it is immediately shipped and becomes dry upon the voyage. The loss in weight and the increase in value are necessary incidents to the sugar of Brazil and it is dry sugar when it reaches New York. In this state of facts, it is incumbent upon the appraiser to ascertain the value of similar dry sugar in the markets of Brazil and not to be limited to its invoice price or market value, when wet.

The decision of the circuit court is affirmed.

John E. Parsons, for the appellant.

Henry C. Platt, assistant United States attorney, for the United States.

[SEAL.]

57 At a stated term of the United States circuit court of appeals in and for the second circuit, held at the court-rooms, in the post-office building, in the city of New York, on the 5th day of February, one thousand nine hundred.

Present: Hon. William J. Wallace, Hon. E. Henry Lacombe, Hon. Nathaniel Shipman, circuit judges.

AMERICAN SUGAR REFINING COMPANY, Appellant,
vs.
THE UNITED STATES, Appellee. } (2676.)

Appeal from the circuit court of the United States for the southern district of New York.

This cause came on to be heard on the transcript of record from the circuit court of the United States for the southern district of New York and was argued by counsel.

On consideration whereof it is now hereby ordered, adjudged, and decreed that the decree of said circuit court be, and it hereby is, affirmed.

It is further ordered that a mandate issue to the said circuit court in accordance with this decree.

W. J. W.
E. H. L.
N. S.

58 [Endorsed:] United States circuit court of appeals, second circuit. American Sugar Refining Co. *vs.* United States. (2676.) Order for mandate. United States circuit court of appeals, second circuit. Filed Feb. 6, 1900. William Parkin, clerk.

59 UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

I, William Parkin, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing pages, numbered from 1 to 58, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of American Sugar Refining Company against The United States (2676), as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 12th day of March, in the year of our Lord one thousand nine hundred, and of the Independence of the said United States the one hundred and twenty-fourth.

Seal United States Circuit Court of Appeals, Second Circuit.

WM. PARKIN, *Clerk.*

[Ten-cent U. S. internal-revenue stamp, canceled. Wm. P.]

59½ [Endorsed:] File No., 17,673. U. S. C. C. of appeals, 2nd circuit. Term No., 225. The American Sugar Refining Company, petitioner, *vs.* The United States. Filed March 17, 1900. (See No. 17697.)

60 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the second circuit, Greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in which The American Sugar Refining Company is appellant and The United States is appellee (2676), which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the southern district of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme

61 Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as afore-

said, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 20th day of June, in the year of our Lord one thousand nine hundred.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

62 [Endorsed:] Supreme Court of the United States, October term, 1899. No. 559. The American Sugar Refining Co. *vs.* The United States. Writ of certiorari. United States circuit court of appeals, second circuit. Filed Jul- 24, 1900. William Parkin, clerk.

63 In the United States Circuit Court of Appeals for the Second Circuit.

THE AMERICAN SUGAR REFINING COMPANY, Appellant,
against
THE UNITED STATES, Appellee. } No. 2676.

It is hereby stipulated and agreed that the certified transcripts of the record in the above-entitled action heretofore filed may be taken as the return to the writ of certiorari granted by the Supreme Court of the United States and filed with the clerk of this court on the 24th day of July, 1900.

Dated New York, July 27th, 1900.

JNO. E. PARSONS.
HENRY L. BURNETT, *U. S. Att'y.*

64 [Endorsed:] U. S. circuit court of appeals for the second circuit. The American Sugar Refining Company, appellant, against The United States, appellee. (No. 2676.) Stipulation. John E. Parsons, attorney for appellant, 111 Broadway, New York city.

65 To the honorable the Supreme Court of the United States:

The record and all proceedings in the cause whereof mention is within made having been lately certified and filed in the office of the clerk of the honorable the Supreme Court of the United States, a copy of the stipulation of counsel is hereto annexed, and under the direction of counsel for the appellant said stipulation is certified as a return to this writ.

New York, August 2d, 1900.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

66 [Endorsed:] United States circuit court of appeals, second circuit. American Sugar Refining Co. *v.* United States. Return to certiorari.

67 [Endorsed:] File No., 17,673. Supreme Court U. S., October term, 1900. Term No., 225. The American Sugar Refining Co., petitioner, *vs.* The United States. Writ of certiorari and return thereto. Office Supreme Court U. S. Filed Aug. 6, 1900. James H. McKenney, clerk.